

181146

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August 3, 2006

\*ALSO ADMITTED IN TX  
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**VIA HAND DELIVERY**

B. Randall Dong, Esquire  
Commission Hearing Officer  
**Public Service Commission of South Carolina**  
Post Office Drawer 11649  
Columbia, South Carolina 29211

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2006 AUG -3 PM 12: 57  
SC PUBLIC SERVICE  
COMMISSION

RE: Application of United Utility Companies, Inc. for adjustment of rates and charges and modifications to certain terms and conditions for the provision of water and sewer service; Docket No. 2006-107-WS

Dear Mr. Dong:

Enclosed for filing please find the original and five (5) copies of the motion of United Utility Companies, Inc. ("UUC") to prohibit the introduction of the pre-filed direct testimony of North Greenville University ("NGU") witnesses Dr. James Epting, Elaine King, and Larry Barnwell into the record or, alternatively, to strike certain portions of the testimony and grant the Applicant an extension in its deadlines to pre-file testimony rebutting the issues raised therein, in the above-referenced matter.

As the motion reflects, it is based, in part, upon the grounds that NGU did not timely serve its pre-filed testimony on the Applicant in this case and that the allowance of this testimony will deny the Applicant, its customers and the other parties of record due process. As you are aware, UUC is currently required to pre-file testimony on Monday, August 7, 2006, rebutting issues raised in the pre-filed direct testimony of the other parties of record.

**Given the nature of the within motion and the time limitations, UUC respectfully requests that you, in your capacity as hearing officer, issue a directive ruling on this motion by Friday, August 4, 2006. Alternatively, the Applicant requests that a special meeting of the Commission be convened to address this motion not later than 24 hours after notice of same may be posted in accordance with R. 103-815 (Supp. 2004) and S.C. Code Ann. § 30-4-80(a) (1991). If the within motion cannot be considered and ruled upon prior to or at that time, the Applicant respectfully requests that a hearing officer's directive be issued granting UUC an**

(Continued . . .)

B. Randall Dong  
August 3, 2006  
Page 2

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extension in the time to file rebuttal testimony as to NGU's testimony until after the Commission is able to rule on this motion.

I would appreciate your acknowledging receipt of this letter and the attached document by date-stamping the extra copy that is enclosed and returning it to me in the envelope provided.

If you have any questions or if you need any additional information, please do not hesitate to contact us.

Sincerely,

**WILLOUGHBY & HOEFER, P.A.**



Benjamin P. Mustian

BPM/kwk  
Enclosure

cc (via First Class U.S. Mail):

Shannon B. Hudson, Esquire (w/enclosure)  
Nanette S. Edwards, Esquire (w/enclosure)  
Duke K. McCall, Jr., Esquire (w/enclosure)  
Jacqueline H. Patterson, Esquire (w/enclosure)  
Mr. Newton Horr (w/enclosure)

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2006-107-WS**

IN RE: )  
Application of United Utility Companies, )  
Inc. for adjustment of rates and charges )  
and modifications to certain terms )  
and conditions for the provision of )  
water and sewer service. )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day one (1) copy of **Motion for Order Prohibiting Introduction or Admission of Testimony and Motion to Strike Testimony** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:


Shannon B. Hudson, Esquire  
Nanette S. Edwards, Esquire  
**Office of Regulatory Staff**  
Post Office Box 11263  
Columbia, South Carolina 29211

Duke K. McCall, Jr., Esquire  
**Leatherwood Walker, Todd & Mann, PC**  
Post Office Box 87  
Greenville, South Carolina 29602

Jacqueline H. Patterson, Esquire  
**Patterson & Coker, PA**  
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Mr. Newton Horr  
131 Greybridge Road  
Pelzer, South Carolina 29669

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SC PUBLIC SERVICE  
COMMISSION

  
\_\_\_\_\_  
Kristina W. Kusa

Columbia, South Carolina  
This 3<sup>rd</sup> day of August, 2006.

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2006-107-W/S**

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2006 AUG -3 PM 12:57  
SC PUBLIC SERVICE  
COMMISSION

IN RE:

Application of United Utility Companies,  
Inc. for adjustment of rates and charges  
and modifications to certain terms  
and conditions for the provision of  
water and sewer service.

**MOTION FOR ORDER PROHIBITING  
INTRODUCTION OR ADMISSION OF  
TESTIMONY AND MOTION TO  
STRIKE TESTIMONY**

Applicant, United Utility Companies, Inc., ("Applicant" or "UUC"), pursuant to S.C. Code Ann. Regs. R. 103-840 (1976), hereby moves for an order precluding the admission of the direct testimony of Dr. James Epting, Elaine King, and Larry Barnwell, submitted on behalf of North Greenville University ("NGU"), into the record in the above-captioned proceeding. Alternatively, UUC moves to strike portions of the testimony which attempt to relitigate issues which have previously been decided by the Public Service Commission of South Carolina ("Commission"). In support thereof, Applicant would respectfully show as follows:

1. NGU was required, under 26 S.C. Code Ann. Regs. 103-869.C (Supp. 2005), to pre-file with this Commission, and serve all parties, any testimony it wished to give in the instant docket on or before July 31, 2006. In accordance with the notice issued May 11, 2006, by the Docketing Department of the Commission, such pre-filing and service was permitted to be accomplished by mail, contingent upon the testimony being postmarked on that date.

2. Applicant is unaware of whether NGU timely pre-filed the testimony of its proposed witnesses with the Commission's Docketing Department or whether it timely served the other parties of record by mail on July 31, 2006. NGU failed to submit a certificate of

service to UUC demonstrating and attesting when service was accomplished. Applicant was not, however, served with a copy of such testimony by mail on July 31, 2006. Attached hereto as Exhibit A and incorporated herein by reference is a copy of the envelope in which NGU served Applicant with a copy of the proposed testimony of its witnesses. As said envelope reflects, it was not deposited in the United States Mail until August 1, 2006. Moreover, same was not received in the office of the undersigned counsel for Applicant until August 2, 2006.

3. The provisions of the Commission's Rules of Practice and Procedure specifically authorize the Commission to establish testimony pre-filing and service deadlines to be adhered to by parties of record. *See* R. 103-869.C, *supra*.

4. NGU's failure to timely serve Applicant with the proposed testimony of its witnesses in the instant docket is therefore a violation of the Commission's Rules of Practice and Procedure and state law.

5. Applicant submits that the only appropriate remedy is that NGU be denied the right to present the testimony of its proposed witnesses in this case. The rights of the other parties of record to have NGU comply with the same laws, rules and orders binding upon them cannot be ignored without violating the equal protection and due process rights of such other parties.

6. Applicant submits that the relief sought hereby is within the inherent power of the Commission to control the procedures employed in cases before it. Moreover, relief of the nature sought herein is available in matters in the courts of this state when a party fails to cooperate in discovery. See Rule 37(b)(2)(B) SCRCF. Accordingly, the same sanction is available to this Commission. *See* S.C. Code Ann. § 1-23-330(1) (2005). Applicant submits that the pre-filing of testimony under the Commission's rules is a procedure akin to discovery since it

informs the parties, in a timely manner prior to hearing, of the nature of another party's case. Accordingly, the testimony of NGU's witnesses should be prohibited from being introduced in the instant case. See Order No. 2002-167, Docket No. 2001-504-E (March 7, 2002) (prohibiting DHEC from presenting witness testimony filed after the pre-filing deadline).

7. Alternatively, even assuming that NGU had timely filed its proposed testimony, the Commission should not permit portions of this testimony into the record of evidence in the instant docket. On or about May 25, 2006, UUC filed with the Commission a Motion to Dismiss the Petition to Intervene filed by NGU. The motion asserted, *inter alia*, that several issues raised by NGU in its Petition had previously been litigated and decided by the Commission. Specifically, UUC stated that disputes concerning the July 9, 2001, contract with NGU had been ruled upon in Commission Order No. 2004-253 issued on May 19, 2004 in Docket No. 2000-210-W/S and that the Commission should deny any attempt to relitigate these matters pursuant to the principles of *res judicata*.

8. The pre-filed direct testimony of Dr. Epting addresses issues regarding the July 9, 2001, contract and the transfer of the wastewater treatment system serving NGU – the very issues referenced by UUC in its Motion to Dismiss and decided by the Commission in Order No. 2004-253. Therefore, the following testimony is in direct contravention of the Directive and should be stricken:

Direct Testimony of Dr. James Epting

1. Page 2, line 4 – Page 3, line 2.
2. Page 6, lines 11-12.

9. In further support of this motion, Applicant incorporates by reference its May 25, 2006, Motion to Dismiss a Portion of the Petition to Intervene of North Greenville University

and to Limit the Scope of Intervention and Answer to Petition to Intervene of North Greenville University and its June 22, 2006, Reply to North Greenville University's Response to Applicant's Motion to Dismiss Petition to Intervene.

WHEREFORE, having fully set forth its motion, Applicant requests that the Commission (1) issue its order denying NGU the right to introduce the testimony of its proposed witnesses in this case, (2) alternatively, striking the identified portions of the testimony and granting UUC an extension of time in which to file testimony rebutting the issues raised by NGU, and (3) granting Applicant such other and further relief as is just and proper.



John M. S. Hoefer, Esquire  
Benjamin P. Mustian, Esquire  
**WILLOUGHBY & HOEFER, P.A.**  
Post Office Box 8416  
Columbia, South Carolina 29202-8416  
803-252-3300  
Attorneys for Applicant

Columbia, South Carolina  
This 3<sup>rd</sup> day of August, 2006

Exhibit "A"

131998/dkm

LEATHERWOOD WALKER TODD & MANN, P.C.

P.O. Box 87

GREENVILLE, S.C. 29602

TO

Mr. John M. S. Hoefer

Willoughby & Hoefer, P

PO Box 8416

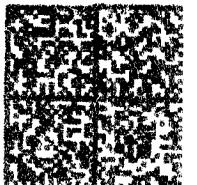
Columbia, SC 29202-3416

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**Willoughby & Hoefer, P.A.**



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